



State of Idaho

DEPARTMENT OF WATER RESOURCES

322 East Front Street • P.O. Box 83720 • Boise, Idaho 83720-0098

Phone: (208) 287-4800 • Fax: (208) 287-6700 • Website: www.idwr.idaho.gov

C.L. "BUTCH" OTTER
Governor

GARY SPACKMAN
Director

May 16, 2014

Re: Fulfilling Requests for Mitigation pursuant to IDAPA 37.03.12.050

Dear Water User:

The Idaho Department of Water Resources (IDWR) received a request for mitigation on April 17, 2014 from eight Big Lost River water right holders (or "petitioners") for mitigation/augmentation (hereinafter referred to as "mitigation") pursuant to Rule 50 of the Water District 34 Water Distribution Rules (IDAPA 37.03.12.050). The water rights for which mitigation has been requested are listed in the attached Table 1. The attached Table 2 sums the mitigation requests by priority and canal. The request is similar to one made last year (2013) and includes many of the same water rights and owners. Water District 34 (WD34) worked last year towards providing some mitigation plans, but IDWR found that those plans were not acceptable.

The purpose of the mitigation request is to supply an amount of water to those users calling for mitigation that would have been present absent pumping by junior groundwater users. Rule 50 provides guidance for satisfying the mitigation requests.

The purpose of this letter is to provide notice to ground water users in WD34 of the mitigation request and the options to fulfill the requests. As a ground water user, you are subject to a Rule 50 mitigation request unless all of your ground water rights meet one of the following exceptions:

1. Your ground water rights contain a remark specifically stating that the right will be administered as separate from the Big Lost River and its tributaries; or
2. Your ground water rights are small domestic and/or stock water rights as defined by Idaho Code § 42-111.

Attached to this letter is a brief explanation of Rule 50 and the two options for fulfilling the mitigation requests. Like last year, options for providing mitigation may be limited or difficult given that water supply conditions are again below normal. If augmentation or mitigation requests are not satisfied, then the water users calling for mitigation may seek regulatory relief by filing a petition with the director of IDWR requesting curtailment of junior ground water users pursuant to Rule 40 of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37.03.11 ("Conjunctive Management Rules" or "CMRs"). In past years, users who have made a call under Rule 50 did not pursue relief under the CMRs upon failure by the ground water users to satisfy the mitigation request. That inaction did not trigger calls under the CMRs in prior years, but the users calling for mitigation this year have indicated that "further alternatives will be explored if there are not some positive results this year."

IDWR has reviewed the water rights included in the request and has reviewed water delivery records of WD 34 and the Big Lost River Irrigation District (BLRID) for the past two years (2013 and 2012). A summary of this review with comments is provided in Table 3.

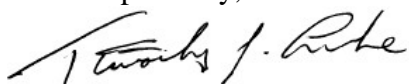
IDWR staff has met with some of the petitioners to discuss possible long-term or permanent solutions over annual Rule 50 mitigation requests. Several of the petitioners are interested in

supplementing their surface water supplies with ground water on their own if they could obtain supplemental ground water rights. Acquisition and transfer of ground water rights to supplement the rights included in the Rule 50 request is a mitigation strategy that may be acceptable under Rule 50 of the WD34 Water Distribution Rules or Rule 40 of the CMRs.

Ground water rights could be acquired either temporarily through water supply bank rentals or permanently through water right transfers. Acquisition of ground water rights under either of these options may minimize or prevent on-going mitigation requests. Lease and rental of ground water rights through the water supply bank may provide a source of water to those that have an immediate need for supplemental water while protecting ground water rights against forfeiture. Similarly, inclusion of ground water rights in an acceptable mitigation plan provides a defense against forfeiture. IDWR staff believes that there may be a number of ground water rights in WD34 that are not currently being used based on review of water measurement plans over the past year. Holders of ground water rights in WD34 receiving this notice who may have an interest in including all or portions of their ground water rights in the water supply bank or a mitigation plan are encouraged to contact the WD34 watermaster Todd Perkes, 208-588-3137 or watermaster34@atcnet.net, or either Tim Luke or Nick Miller at IDWR, 208-287-4800.

Per Rule 50.04.d, WD34 is authorized to acquire water supplies, on behalf of the ground water users, to augment natural flow for mitigation purposes. The water district is authorized to add the cost of acquiring flow augmentation water to the annual assessment of ground water users who do not provide separate augmentation or a separate mitigation plan. Alternatively, junior ground water right holders may propose to provide mitigation plans. Written mitigation plans from WD34 and/or junior ground water right holders should be filed with WD34 and IDWR by June 2, 2014. Mitigation plans submitted to IDWR should be addressed to IDWR at the address shown on this letterhead. Holders of junior ground water rights who do not divert or use ground water in 2014 will not be subject to mitigation costs.

Respectfully,



Tim Luke

Water Compliance Bureau

cc: Todd Perkes, WD34 Watermaster
Seth Beal, WD34 Advisory Committee Chairman
Kenneth Bell
Carole Campbell
James Rindfleisch
Richard Reynolds
Mark Roberts
Josephine Spraker
Harvey Walker
Dave Wanstrom
Reva Walker
Big Lost River Irrigation District
IDWR Eastern Region

Rule 50 Description and Mitigation Options

The required mitigation may be fulfilled by the water district, an organization of ground water users, or a combination thereof. IDWR will issue a notice to ground water users informing them of their obligations and options pursuant to this rule.

Rule 50 provides two options for fulfilling the request for mitigation when formulating a mitigation plan, either by the district or by a group of groundwater users.

- 1. Augment the natural flow available to the rights calling for mitigation during the period when those rights are not otherwise deliverable, but would have had a full supply absent pumping by junior groundwater pumpers.** While the actual amount that would have been available is unknown, Rule 50 establishes upper bounds on the amount and timing of natural flow augmentation. Rule 50.04(c) establishes a river depletion of 6,110 AF¹ and Rule 50.04(c).i establishes the timing that the depletion occurs. In other words, these rules establish the otherwise unknown amount of water that would have been available absent pumping by junior groundwater users. However, Rule 50.04(c).ii clarifies that the amount of augmentation to be provided to the natural flow is limited to the extent those users' water rights can be filled in priority with all other rights by the augmented natural flow within the amount and timing outlined in 50.04(c) and 50.04(c).i.

Rule 50.04(c).iii provides that the natural flow can be augmented either by recharge efforts, or by adding water to the Big Lost River or canals anywhere between Mackay Dam and the Arco Diversion in an amount adequate to augment the natural flow by the amounts and at times provided by Rule 50.04(c) and 50.04(c).i - ii. Flow will need to be augmented each day during the irrigation season that water delivery is called for and the natural flow is not otherwise available to fulfill the water rights calling for mitigation. However, not all rights calling for mitigation will benefit from the augmentation, as the upper limit of flow augmentation established in Rules 50.04(c) and 50.04(c).i may be exceeded by the demand for mitigation water. Additionally, water added to augment the flow of the river may be subject to appropriate conveyance losses between the point of injection to the river and the canal heading. Such losses may reduce the amount of water available at a canal heading for mitigation purposes. Furthermore, delivery of mitigation water to water right holders on a canal operated by the Big Lost River Irrigation District is subject to conveyance losses through the canal as determined by the Big Lost River Irrigation District.

- 2. Submit an alternative mitigation plan(s) (Rule 50.04.e), which identifies actions and measures to prevent or compensate for impacts to diversions by junior ground water users, to the director for consideration pursuant to IDAPA 37.03.11.043.** Alternative mitigation plans could include monetary compensation, partial fulfillment of the flow augmentation requirements combined with a partial reduction in ground water use, non-use of wells, or other combinations of actions that prevent or compensate for the impacts.

If the mitigation requirements under IDAPA 37.03.12.050 are not fulfilled by the junior ground water users, either as participants in a plan operated and funded by WD34, or an alternate plan, the water users calling for mitigation can seek regulatory relief by filing a petition with the director of IDWR requesting curtailment of junior ground water users pursuant to Rule 40 of the "Rules for Conjunctive Management of Surface and Ground Water Resources," IDAPA 37.03.11.

¹ Water District 34 assessments over the past 5 years show ground water use in WD34 has been higher than the 47,000 AF cited in rule 50.04(c). The 47,000 AF estimate of ground water withdrawal and the 13% estimated annual depletion described in Rule 50.04.c will remain in effect this year. This estimate may be revised after more accurate water use records are collected from new flow meter installations this year.

Table 1. Rights calling for mitigation sorted by owner

Owner	Right No.	Rate miners inches	Rate cfs	Priority Date	Diversion
Kenneth Bell	34-518	320	6.4	6/1/1890	MUNSEY/ MILLER
	34-418B	80	1.6	5/1/1892	MUNSEY/MILLER
Carole Campbell	34-243A	2	0.04	6/1/1880	ARCO
	34-244B	25	0.5	10/2/1885	ARCO
James Rindfleisch*	34-14299	8	0.15	6/1/1880	ARCO
	34-14301	97	1.94	10/2/1885	ARCO
Richard Reynolds	34-301E	90	1.8	5/1/1885	EASTSIDE
Mark Roberts**	34-394C	30	0.59	6/1/1890	ARCO
Josephine Spraker**	34-106	11	0.22	6/1/1887	ARCO
	34-108	80	1.6	7/1/1887	ARCO
	34-109	23	0.46	8/1/1888	ARCO
	34-179	65	1.3	7/1/1887	ARCO
	34-487	65	1.3	10/20/1901	ARCO
	34-521	115	1.8	6/1/1887	ARCO
	34-302	106	2.12	4/22/1889	EASTSIDE
	34-904	60	1.2	5/1/1886	MOORE
Harvey Walker	34-10476	37	0.74	5/1/1885	ARCO
	34-10479	180	3.6	10/2/1885	ARCO
	34-3B	70	1.4	6/1/1887	ARCO
	34-793***	160	3.2	6/1/1887	ARCO
	34-10478	80	1.6	5/1/1892	ARCO
David Wanstrom	34-14109	29	0.58	8/31/1884	MOORE
	34-14112	22	0.44	6/1/1896	MOORE
	34-14115^	8	0.16	6/1/1897	MOORE
	34-14118	8	0.16	6/15/1897	MOORE
	34-462B	27	0.54	6/1/1898	EASTSIDE/ISALND

* James Rindfleisch called for mitigation of water rights 34-234B and 34-244D. The numbers listed in this table reflect recent renumbering of his rights due to ownership splits. Lands to which these rights are appurtenant are located within BLRID but have no storage water supply

**Josephine Spraker and Mark Roberts both requested mitigation of water right 34-394. Ms. Spraker's portion of right 34-394 was right 34-394C and conveyed to Mark Roberts.

*** Right 34-793 was not included in the mitigation request but is combined with other rights included in the request.

^ Right 34-14115 was not included in the mitigation request but is combined with other rights included in the request.

A portion of the water right acres owned by Harvey Walker are located outside of the BLRID.

The following rights were included in the mitigation request packet submitted to IDWR but have the following deficiencies:

- The mitigation request included water right 34-789 (5/1/1892) owned by Reva Walker but Ms. Walker did not sign an individual petition form. Additionally, Ms. Walker owns a ground water right that is supplemental to right 34-789.
- Rights 34-800B (6/1/1886; 5 inches) and 34-800G (6/1/1886; 8.1 inches) were included on a petition form signed by David Wanstrom but the rights are appurtenant to land owned by Kurt Wanstrom. No petition was received by Kurt Wanstrom. Additionally, the land to which right 34-800B is appurtenant appears to have a land use that is not susceptible to irrigation.

Table 2. Rights calling for mitigation totaled by priority and diversion

Priority Date	ALL DIVs.		EASTSIDE		MOORE		ARCO		MUNSEY	
	Total	Cum.	Total	Cum.	Total	Cum.	Total	Cum.	Total	Cum.
10/20/1901	1.30	1.30	-	-	-	-	1.30	1.30	-	-
6/1/1898	0.54	1.84	0.54	0.54	-	-	-	-	-	-
6/15/1897	0.16	2.00	-	-	0.16	0.16	-	-	-	-
6/1/1897*	0.16	2.16	-	-	0.16	0.32	-	-	-	-
6/1/1896	0.44	2.60	-	-	0.44	0.76	-	-	-	-
5/1/1892	3.20	5.80	-	-	-	-	1.60	2.90	1.60	1.60
6/1/1890	6.99	12.79	-	-	-	-	0.59	3.49	6.40	8.00
4/22/1889	2.12	14.91	2.12	2.66	-	-	-	-	-	-
8/1/1888	0.46	15.37	-	-	-	-	0.46	3.95	-	-
7/1/1887	2.90	18.27	-	-	-	-	2.90	6.85	-	-
6/1/1887**	6.62	24.89	-	-	-	-	3.42	10.27	-	-
5/1/1886	1.20	26.09	-	-	1.20	1.96	-	-	-	-
10/2/1885	6.04	32.13	-	-	-	-	6.04	16.31	-	-
5/1/1885	2.54	34.67	1.80	4.46	-	-	0.74	17.05	-	-
8/31/1884	0.58	35.25	-	-	0.58	2.54	-	-	-	-
6/1/1880	0.19	35.44	-	-	-	-	0.19	17.24	-	-

* 0.16 cfs not included in mitigation request but combined with other rights in request by same owner

** 3.20 cfs not included in mitigation request but combined with other rights in request by same owner

Water right priority dates and diversion rates in shaded boxes denote rights having supplemental ground water sources and rights.

Table 3. Review of 2013/2012 water delivery records for rights included in 2014 mitigation request

Owner	Right No.	Rate cfs	Priority Date	Diversion	Acres	Acre Limit	Total Cum or Comb Acres	Supplmntl Gw Rt?	2013 Canal Delivery (cfs)	2013 Canal Delivery (AF)	2013 Canal Delivery (AF/ac)	2013 HG Delivery (AF/ac)	2012 Canal Delivery (AF/ac)
Kenneth Bell	34-518	6.4	6/1/1890	MUNSEY/ MILLER	284								
	34-418B	1.6	5/1/1892	MUNSEY/MILLER	284		284		211.09	418.7	1.47	0.75	3.71
Carole Campbell	34-243A	0.04	6/1/1880	ARCO	2	2							
	34-244B	0.5	10/2/1885	ARCO	24	24	24		45.72	90.7	3.49	1.98	4.55
James Rindfleisch	34-14299	0.15	6/1/1880	ARCO	7.6	7.6							
	34-14301	1.94	10/2/1885	ARCO	84.8	84.8	92.4		27.04	53.6	0.58	0.28	NR
Richard Reynolds	34-301E	1.8	5/1/1885	EASTSIDE	95	95	95		196.30	389.4	4.10	2.92	4.57
Mark Robert	34-394C	0.59	6/1/1890	ARCO	15**	15	18		56.50	112.1	6.23	3.31	9.04
Josephine Spraker	34-106	0.22	6/1/1887	ARCO	84	11							
	34-108	1.6	7/1/1887	ARCO	84								
	34-109	0.46	8/1/1888	ARCO	84								
	34-179	1.3	7/1/1887	ARCO	66								
	34-487	1.3	10/20/1901	ARCO	55								
	34-521	1.8	6/1/1887	ARCO	102		307		341.12	676.6	2.20	1.17	NR
	34-302	2.12	4/22/1889	EASTSIDE	53		53	Y	NR			2.1 (gw)	0
	34-904	1.2	5/1/1886	MOORE	78		78	Y	NR			3.5 (gw)	NR
Harvey Walker	34-10476	0.74	5/1/1885	ARCO	574.5	37		Y (190 ac)					
	34-10479	3.6	10/2/1885	ARCO	574.5	180		Y (190 ac)					
	34-3B	1.4	6/1/1887	ARCO	574.5	70		Y (190 ac)					
	34-793^	3.2	6/1/1887	ARCO	574.5	160		Y (190 ac)					
	34-10478	1.6	5/1/1892	ARCO	574.5	80	527	Y (190 ac)	357.87	709.8	1.35	0.75	3.23
David Wanstrom	34-14109	0.58	8/31/1884	MOORE	49	28.8							
	34-14112	0.44	6/1/1896	MOORE	49								
	34-14115***	0.16	6/1/1897	MOORE	49								
	34-14118	0.16	6/15/1897	MOORE	49		49		96.95	192.3	3.92	2.55	10.16
	34-462B	0.54	6/1/1898	EASTSIDE/ISALND	28.5		28.5	Y	NR			2.4 (gw)	

AF/ac = acre-feet/per acre based on number of water right acres (irrigated acres may be less); NR= Not reported or no use; gw = ground water use

^ Right was not included in mitigation request but is combined with other rights included in request.

Comments/Observations on 2013-2013 Delivery Records from WD34 and BLRID

IDWR has reviewed the water rights included in the request and has reviewed water delivery records of WD 34 and the Big Lost River Irrigation District (BLRID) for the past two years (2013 and 2012). A summary of this review is provided in Table 3. IDWR offers the following comments regarding this review:

- As noted in Table 1, several deficiencies were found with the petitions including unsigned petitions or inclusion of rights not owned by a petitioner. Additionally, several water rights included in the petitions were not valid water right numbers or were not properly referenced. In other cases, overlapping senior priority surface water rights were omitted from the petitions.
- Some of the water rights for which mitigation is requested have combined limits with ground water rights and/or overlapping places of use with groundwater rights or other surface water rights. IDWR found that water delivery records were not reported for several of the Big Lost River rights included in the mitigation request that have overlapping supplemental ground water rights (see rights 34-302, 34-904 and 34-462B). In these specific cases, the estimated water use under the supplemental ground water rights appeared to provide an adequate supply of water in 2013. Although Rule 50 does not preclude the ability of Big Lost River right holders with supplemental ground water rights to include their Big Lost River decreed rights in a mitigation request, it does not seem reasonable that such right holders should make a mitigation request for rights in which they have a proven and adequate supplemental source of water. Additionally, users requesting mitigation who have ground water rights and wells but who do not use the wells should take reasonable steps towards using the resource and rights to the extent possible.
- A majority of the water rights for which mitigation is requested are located on the Arco and Munsey Canals where much of the water right places of use are in relative close proximity to each other. Only a few rights and relatively few irrigated acres that do not have the benefit of supplemental ground water rights are located on the Moore and Eastside Canals and the owners of those rights and lands appeared to have received adequate deliveries in 2013 and 2012.
- According to the 2012-2013 delivery records, several of the petitioners received field head gate deliveries that were adequate for raising a crop on the total authorized water right acres. In these cases, 2013 field head gate deliveries were between 2 and 4 acre-feet per acre and included deliveries from both Big Lost River decreed rights and BLRID storage water.
- Most of the more senior priority rights included in the request are located on the Arco Canal. Some of the lands served by the Arco Canal, including some of the land in the mitigation request, are not within the BLRID service area or there are some lands within the BLRID area that do not have BLRID storage water. Lands with more senior priority decreed rights have a more limited allocation of storage water than lands with more junior priority decreed rights. Delivery of the more senior priority decreed rights, particularly some of those on the Arco Canal, seems to be more challenging given on-going annual drought conditions, conveyance losses, and lack of storage water to certain lands. It is reasonable to expect that some of the senior priority right holders in the Arco area and/or on the Arco Canal would have an interest in supplementing their senior surface water rights with ground water rights and sources.